

ASSEMBLY BILL

No. 1774

**Introduced by Committee on Banking and Finance (Wiggins
(Chair), Calderon, Chan, Chavez, Correa, Montanez, and
Vargas)**

March 13, 2003

An act to amend Sections 261, 772, 1500, 1560, 1808, 1900, 4839, 4843, 4946, 8152, 14250, 14354, 16151, 16701, 31507, and 33903 of, to amend and renumber Sections 4879.12, 4879.13, and 4879.135 of, and to repeal Section 8012 of, the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1774, as introduced, Committee on Banking and Finance. Financial institutions.

Existing law provides for regulation and licensure of various financial institutions and providers of financial services by the Commissioner of Financial Institutions, including banks, depository corporations, savings associations, credit unions, business and industrial development corporations, and transmitters of money abroad. Existing law authorizes the commissioner to examine these licensed entities at any time. Existing law authorizes the commissioner to deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of specified financial institutions to state or federal law enforcement agencies to check for a criminal record. Existing law authorizes banks and trust companies to make specified investments.

This bill would revise the provisions authorizing the commissioner to examine banks, depository corporations, savings associations, credit

unions, business and industrial development corporations, and transmitters of money abroad. The bill would authorize the commissioner to examine any office of these entities whether the offices are within or outside of this state. The bill would authorize the commissioner to deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of these entities, or a controlling person, as defined, or an affiliate of these entities, including entities that are proposed but not yet in existence, to state or federal law enforcement agencies to check for a criminal record. The bill would revise the provisions authorizing banks and trust companies to make investments.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 261 of the Financial Code is amended
2 to read:
3 261. (a) *For the purposes of this section the following*
4 *definitions shall apply:*
5 (1) *“Control” has the same meaning set forth in subdivision (b)*
6 *of Section 700.*
7 (2) *“Controlling person” means a person who, directly or*
8 *indirectly, controls a financial institution.*
9 (3) *“Financial institution” means any of the following:*
10 (A) *A commercial bank, industrial bank, trust company,*
11 *savings association, or credit union incorporated under the laws*
12 *of this state.*
13 (B) *A person licensed by the commissioner under Chapter 14*
14 *(commencing with Section 1800) to receive money for*
15 *transmission to foreign countries.*
16 (C) *A person authorized by the commissioner pursuant to*
17 *Section 1803 to act as an agent of a person licensed by the*
18 *commissioner to receive money for transmission to foreign*
19 *countries.*
20 (D) *A person licensed by the commissioner pursuant to*
21 *Division 7 (commencing with Section 18000) to transact business*
22 *as a premium finance agency.*



1 (E) A person licensed by the commissioner pursuant to
2 Division 15 (commencing with Section 31000) to transact business
3 as a business and industrial development corporation.

4 (F) A person licensed by the commissioner pursuant to
5 Division 16 (commencing with Section 33000) to engage in the
6 business of selling payment instruments in this state issued by the
7 licensee.

8 (G) A corporation incorporated under the laws of this state for
9 the purpose of engaging in, or that is authorized by the
10 commissioner to engage in, business pursuant to Article 1
11 (commencing with Section 3500) of Chapter 19.

12 (H) A foreign corporation that is licensed by the commissioner
13 pursuant to Article 1 (commencing with Section 3500) of Chapter
14 19 to maintain an office in this state and to transact at that office
15 business pursuant to Article 1 (commencing with Section 3500) of
16 Chapter 19.

17 (b) Notwithstanding any other provision of law, the
18 commissioner may deliver fingerprints taken of an applicant for
19 employment, or a director, officer, or employee of a bank, bank
20 holding company, or any subsidiary of a bank or bank holding
21 company, credit union or any subsidiary of a credit union,
22 industrial loan company, industrial loan holding company, or any
23 subsidiary of an industrial loan company or industrial loan holding
24 company, an existing or proposed financial institution, and
25 existing or proposed controlling person of a financial institution,
26 or an existing or proposed affiliate of a financial institution to
27 local, state, or federal law enforcement agencies for the purpose
28 of obtaining information as to the existence and nature of a
29 criminal record, if any, of that person relating to convictions, and
30 to any arrest for which the person is released on bail or on his or
31 her own recognizance pending trial, for the commission or
32 attempted commission of a crime involving robbery, burglary,
33 theft, embezzlement, fraud, forgery, bookmaking, receiving stolen
34 property, counterfeiting, or involving checks or credit cards or
35 using computers.

36 ~~(b)~~

37 (c) No request shall be submitted pursuant to this section
38 without the written consent of the person affected.

39 ~~(c)~~

1 (d) Any criminal history information obtained pursuant to this
2 section shall be confidential and no recipient shall disclose its
3 contents other than for the purpose for which it was acquired.

4 SEC. 2. Section 772 of the Financial Code is amended to read:

5 772. ~~(a) Notwithstanding the provisions of Section 1335, and~~
6 ~~subject to such regulations and rules as the commissioner may~~
7 ~~prescribe, a bank may invest in the capital stock, obligations,~~
8 ~~equity, debt, or other securities of one or more corporations,~~
9 ~~limited liability corporations, limited liability companies, limited~~
10 ~~partnerships, limited liability partnerships, or other similar~~
11 ~~business organizations.~~

12 ~~(b) No such corporation may act as an insurance company,~~
13 ~~insurance agent, or insurance broker. This prohibition shall not be~~
14 ~~deemed to exclude other possible restrictions with respect to the~~
15 ~~activities of such corporations.~~

16 *Any reference to "corporation" in regulations adopted by the*
17 *commissioner to implement this section shall be deemed to include*
18 *limited liability corporations, limited liability companies, limited*
19 *partnerships, limited liability partnerships, or other similar*
20 *business organizations.*

21 SEC. 3. Section 1500 of the Financial Code is amended to
22 read:

23 1500. No corporation shall engage in the trust business unless:

24 (a) Its articles comply with the requirements of subdivision (b),
25 ~~(c), or (d), or (e)~~ of Section 600; and

26 (b) It has received from the commissioner a certificate of
27 authority pursuant to Section 401 to engage in the trust business,
28 or, if it is a bank, has received the authorization of the
29 commissioner to engage in the trust business pursuant to Section
30 1500.1; and

31 (c) It has deposited with the State Treasurer money or securities
32 in compliance with Article 3 (commencing with Section 1540) of
33 this chapter.

34 SEC. 4. Section 1560 of the Financial Code is amended to
35 read:

36 1560. A trust company may invest its contributed capital only
37 in the securities and properties in which a commercial bank is
38 permitted to invest its funds pursuant to Sections ~~1352 to 1366~~
39 ~~1000 to 1018, inclusive, of Chapter 10 (commencing with Section~~
40 ~~1200)~~ and in loans on real property which commercial banks are

1 permitted to make pursuant to Article 2 (commencing with Section
2 1220) of Chapter 10.

3 SEC. 5. Section 1808 of the Financial Code is amended to
4 read:

5 1808. (a) The commissioner may at any time and from time
6 to time examine the business *and any office, within or outside this*
7 *state*, of any licensee or any agent of a licensee in order to ascertain
8 whether that business is being conducted in a lawful manner and
9 whether all moneys received for transmission are properly
10 accounted for.

11 (b) The directors, officers, and employees of a licensee or agent
12 of a licensee being examined by the commissioner shall exhibit to
13 the commissioner, on request, any or all of the licensee's accounts,
14 books, correspondence, memoranda, papers, and other records
15 and shall otherwise facilitate the examination so far as it may be
16 in their power to do so.

17 SEC. 6. Section 1900 of the Financial Code is amended to
18 read:

19 1900. (a) (1) For purposes of this subdivision, an
20 examination made by the commissioner in conjunction with or
21 with assistance from a bank regulatory agency of the United States,
22 of a state of the United States, or of a foreign nation is deemed to
23 be an examination caused by the commissioner.

24 (2) No provision of this subdivision shall be deemed to require
25 that the commissioner cause an examination to be made onsite at
26 the offices of a bank.

27 (3) The commissioner shall cause every California state bank,
28 every California state trust company, and the business in this state
29 of every foreign (other nation) bank licensed under Article 3
30 (commencing with Section 1750) of Chapter 13.5 to be examined
31 to the extent and whenever and as often as the commissioner shall
32 deem it advisable, but in no case less than once every two calendar
33 years.

34 (b) The commissioner may at any time examine any of the
35 following:

36 (1) ~~Any foreign (other state) state bank that maintains a branch~~
37 ~~office in office of a bank organized under the laws of this state.~~

38 (2) ~~Any facility (as defined in Section 3800) that office of a~~
39 ~~foreign (other state) bank that does not maintain a branch office in~~
40 ~~this state,~~ maintains *an office* in this state.

1 (3) Any representative office (as defined in Section 1700) that
2 of a foreign (other nation) bank is licensed under Article 2
3 (commencing with Section 1725) of Chapter 13.5 to maintain that
4 maintains an office in this state.

5 (c) The officers and employees of every California state bank,
6 California state trust company, and foreign bank being examined
7 shall exhibit to the examiners, on request, any or all of its
8 securities, books, records, and accounts and shall otherwise
9 facilitate the examination so far as it may be in their power.

10 SEC. 7. Section 4839 of the Financial Code is amended to
11 read:

12 4839. Fees shall be paid to, and collected by, the
13 commissioner, as follows:

14 (a) The fee for filing an application for approval of a sale under
15 this division shall be two thousand five hundred dollars (\$2,500).

16 (b) The fee for filing an application for approval of a merger
17 under this division shall be two thousand five hundred dollars
18 (\$2,500).

19 (c) (1) The fee for filing an application for approval of a
20 conversion under this division shall be five thousand dollars
21 (\$5,000).

22 (2) The fee for issuing a certificate of authority or license under
23 subdivision (a) of Section 4928 or subdivision (a) of Section 4948
24 shall be two thousand five hundred dollars (\$2,500).

25 (d) The fee for issuing a certificate of authority or license under
26 any other provision of this division shall be twenty-five dollars
27 (\$25).

28 (e) The fee for issuing a certificate under Section 4862,
29 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars (\$25).

30 (f) In case the commissioner makes an examination in
31 connection with a pending application, as described in paragraph
32 (1), (2), (3), ~~or~~ (4), (5), or (6) the applicant shall pay a fee for the
33 examination in the sum of seventy-five dollars (\$75) per hour for
34 each examiner engaged in the examination plus, if in the opinion
35 of the commissioner it is necessary for any examiner engaged in
36 the examination to travel outside this state, the travel expenses of
37 the examiner.

38 (1) Examination of the selling depository corporation in
39 connection with a pending application for approval of a sale of a

1 whole business unit (as defined in Section 4840) under Article 2
2 (commencing with Section 4845) of Chapter 3.

3 (2) Examination of the partial business unit (as defined in
4 Section 4840) to be sold and any related affairs of the selling
5 depository corporation in connection with a pending application
6 for approval of a sale of a partial business unit (as defined in
7 Section 4840) under Article 2 (commencing with Section 4845) of
8 Chapter 3.

9 (3) Examination of the purchasing depository corporation in
10 connection with a pending application for approval of a sale of a
11 whole business unit (as defined in Section 4880) under Article 3.5
12 (commencing with Section 4876.01) of Chapter 3 or of a partial
13 business unit (as defined in Section 4880) under Article 4.5
14 (commencing with Section 4878.01) of Chapter 3.

15 (4) Examination of the surviving depository corporation in
16 connection with a pending application for approval of a merger
17 under Article 4 (commencing with Section 4908.01) of Chapter 4.

18 (5) Examination of the disappearing depository corporation in
19 connection with a pending application for approval of a merger
20 under Article 1 (commencing with Section 4880) or Article 2
21 (commencing with Section 4895.01) of Chapter 4.

22 (6) Examination of the converting depository corporation in
23 connection with a pending application for approval of a
24 conversion under Article 1 (commencing with Section 4920) or
25 Article 2 (commencing with Section 4940) of Chapter 5.

26 SEC. 8. Section 4843 of the Financial Code is amended to
27 read:

28 4843. In case a national banking association or federal savings
29 association that is authorized to transact trust business in this state
30 sells a partial business unit located in this state of the type
31 described in paragraph (1) or subparagraph (A) or (B) of paragraph
32 (2) of subdivision ~~(d)~~ (e) of Section 4840 to a national banking
33 association or federal savings association pursuant to federal law,
34 the sale shall:

35 (a) Have the same effect as provided in subdivision (e) of
36 Section 4879.14 in the case of a sale of the type defined in Section
37 4879.01.

38 (b) Be subject to the provisions of Section 4842.

39 SEC. 9. Section 4879.12 of the Financial Code is amended
40 and renumbered to read:

~~4879.12.~~

~~4879.11.~~ After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale, and at that time the sale shall become effective for all purposes.

SEC. 10. Section 4879.13 of the Financial Code is amended and renumbered to read:

~~4879.13.~~

~~4879.12.~~ When a sale becomes effective, in case the purchaser is a California state depository corporation or California state-licensed foreign (other nation) bank:

(a) Unless the purchaser provided otherwise in the application for approval of the sale or unless the commissioner provided otherwise in the approval of the application:

(1) The purchaser may establish equivalent offices at any branch offices, places of business, extensions of offices, and other facilities of the seller transferred in the sale.

(2) If the seller was authorized to transact trust business and if the partial business unit sold includes any trust business, the purchaser, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the purchaser certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

SEC. 11. Section 4879.135 of the Financial Code is amended and renumbered to read:

~~4879.135.~~

~~4879.13.~~ In case a seller is a California state commercial bank and sells all of its trust business in a sale:

(a) As of the time when the sale becomes effective, the commissioner shall issue to the seller certificates of authority authorizing it to transact commercial banking business in replacement of the certificates of authority that the seller is required to surrender pursuant to subdivision (b).

(b) Promptly after the sale becomes effective, the seller shall surrender to the commissioner for cancellation its certificates of authority authorizing it to transact commercial banking business and trust business.

SEC. 12. Section 4946 of the Financial Code is amended to read:

4946. After an application for approval of a conversion has been approved by the commissioner but before the conversion becomes effective:

(a) ~~The~~, *the* converting depository corporation shall file with the commissioner an application for approval of the articles of the resulting depository corporation. When the commissioner approves the articles, the commissioner shall endorse the approval on the articles. After the articles are filed with the Secretary of State, the resulting depository corporation shall file with the commissioner a copy of the articles certified by the Secretary of State.

~~(b) The resulting depository corporation shall file with the commissioner an application for approval of its bylaws. The bylaws shall not take effect unless and until they are approved by the commissioner.~~

SEC. 13. Section 8012 of the Financial Code is repealed.

~~8012. (a) Notwithstanding any other provision of law, the commissioner may deliver fingerprints taken of an applicant or a director, officer, or employee of an association, savings and loan holding company or any of their subsidiaries to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of that person relating to convictions, and to any arrest for which the person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.~~

~~(b) No request shall be submitted pursuant to this section without the written consent of the person affected.~~

~~(c) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.~~

SEC. 14. Section 8152 of the Financial Code is amended to read:

8152. From time to time the commissioner may, without previous notice, examine or cause an examination to be made into

1 the affairs of each association, *and any office of the association*
2 *within or outside this state*, savings and loan holding company and
3 subsidiary of any association or savings and loan holding company
4 subject to this division.

5 SEC. 15. Section 14250 of the Financial Code is amended to
6 read:

7 14250. (a) (1) The commissioner may at any time
8 investigate into the affairs and examine the books, accounts,
9 records, ~~and files~~, *and any office within or outside of this state* used
10 in the business of every credit union, whether it acts or claims to
11 act under or without authority of this division.

12 (2) The commissioner and the commissioner's duly designated
13 representatives shall have free access to the offices and places of
14 business, books, accounts, papers, records, files, safes, and vaults
15 of every credit union referred to in paragraph (1).

16 (b) (1) The commissioner shall examine every credit union
17 organized under the laws of this state to the extent and whenever
18 and as often as the commissioner shall deem it advisable, but in no
19 case less than once every two years.

20 (2) For purposes of this subdivision, an examination made by
21 the commissioner in conjunction with or with assistance from the
22 National Credit Union Administration or a credit union regulatory
23 agency of another state of the United States is deemed to be an
24 examination made by the commissioner.

25 (3) No provision of this subdivision shall be deemed to require
26 that the commissioner make an examination onsite at the offices
27 of a credit union.

28 SEC. 16. Section 14354 of the Financial Code is amended to
29 read:

30 14354. ~~As of the operative date of this section:~~

31 ~~(a) There is established the Credit Union Fund in the State~~
32 ~~Treasury.~~

33 ~~(b) All money on deposit with the Treasurer in the State~~
34 ~~Corporations Fund that has been received or collected by the~~
35 ~~Commissioner of Corporations under this division or any other~~
36 ~~law relating to credit unions or the credit union business, all other~~
37 ~~assets of the State Corporations Fund that have been acquired by~~
38 ~~the Commissioner of Corporations under this division or any other~~
39 ~~law relating to credit unions or the credit union business, and all~~
40 ~~liabilities of the State Corporations Fund that have been incurred~~

~~under this division or any other law relating to credit unions or the credit union business shall be transferred to the Credit Union Fund.~~

SEC. 17. Section 16151 of the Financial Code is amended to read:

16151. The commissioner may make any examination of a foreign (other state) credit union at any office of the commissioner. *The commissioner may make an examination of any office, within or outside of this state, of a foreign (other state) credit union that maintains an office in this state.*

SEC. 18. Section 16701 of the Financial Code is amended to read:

16701. The commissioner may make an examination of a foreign (other nation) credit union at any office of the commissioner. *The commissioner may make an examination of any office, within or outside of this state, of a foreign (other nation) credit union that maintains an office in this state.*

SEC. 19. Section 31507 of the Financial Code is amended to read:

31507. (a) The commissioner shall examine each licensee not less frequently than once each calendar year.

(b) (1) The commissioner may at any time examine any licensee or any parent or subsidiary of a licensee.

(2) *The commissioner may at any time examine any office of any licensee within or outside of this state.*

(3) The commissioner may at any time examine any affiliate of a licensee (other than a parent or subsidiary of the licensee) but only with respect to matters relating to transactions between the affiliate and the licensee.

(c) The directors, officers, and employees of any licensee or of any affiliate of a licensee being examined by the commissioner and any other person having custody of any of the books, accounts, or records of such licensee or of such affiliate shall exhibit to the commissioner, on request, any or all of the books, accounts, and other records of such licensee or of such affiliate and shall otherwise facilitate such examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate which relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

1 (d) The commissioner may, if in his or her opinion it is
2 necessary in the examination of any licensee or of any affiliate of
3 a licensee, retain any certified public accountant, attorney,
4 appraiser, or other person to assist him or her, and such licensee
5 shall pay, within 10 days after receipt of a statement from the
6 commissioner, the fees of such person.

7 SEC. 20. Section 33903 of the Financial Code is amended to
8 read:

9 33903. (a) The commissioner may at any time examine any
10 licensee *and any office of the licensee within or outside of this*
11 *state.*

12 (b) In case the commissioner has initiated proceedings to issue,
13 or has issued, an order imposing conditions upon the surrender of
14 the license of a licensee under Section 34001, an order suspending
15 or revoking the license of a licensee under Section 34109 or 34110,
16 or an order taking possession of the property and business of a
17 licensee under Section 34113, the commissioner may examine any
18 California agent of such licensee with respect to sales by such
19 agent of payment instruments issued by the licensee and related
20 matters.

21 (c) Any licensee or California agent of a licensee being
22 examined by the commissioner shall, and each licensee shall use
23 its best efforts to require each of its California agents being
24 examined by the commissioner to, exhibit to the commissioner and
25 permit the commissioner to copy, on request, any or all of the
26 books, accounts, and other records of such licensee or such
27 California agent, as the case may be, which may relate to such
28 examination, and otherwise facilitate such examination so far as
29 it may be in its power to do so.

30 (d) The commissioner may, if in the commissioner's opinion it
31 is necessary in the examination of any licensee or of any California
32 agent of a licensee, retain any certified public accountant, attorney,
33 appraiser, or other person to assist the commissioner, and such
34 licensee shall pay, within 10 days after receipt of a statement from
35 the commissioner, the fees of such person.